

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CH2M HILL, INC.,

Plaintiff,

v.

COMAL COUNTY, TEXAS,

Defendant.

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Civil Action No.: SA-09-CV-555-XR

ORDER ON MOTION FOR LEAVE TO AMEND PLEADING

On this day, the Court considered Defendant's motion for leave to file an amended pleading (Docket Entry No. 20). While Plaintiff does not agree to the motion, the motion is unopposed.

Although leave to amend pleadings "shall be freely given when justice so requires," FED. R. Civ. P. 15(a), it is not automatic. *Avatar Exploration, Inc. v. Chevron, U.S.A., Inc.*, 933 F.2d 314, 320 (5th Cir. 1991). The decision to grant or deny a motion to amend is within the discretion of the court. *Id.* In exercising its discretion, the trial court considers such factors as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowing the amendment, (and) futility of amendment." *Gregory v. Mitchell*, 634 F.2d 199, 203 (5th Cir. 1981) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)).

Defendant Comal County's motion¹ is pursuant to Rule 15 of the Federal Rules of Civil Procedure because it was filed before the deadline to amend pleadings. *Cf. Fahim v. Marriott Hotel*


¹Mot. for Leave, May 13, 2010 (Docket Entry No. 20). Comal County filed its motion on May 13, 2010. The deadline to amend pleadings was May 14, 2010. Amended Schedule Order, Jan. 11, 2010 (Docket Entry No. 18).

Servs., Inc., 551 F.3d 344, 348 (5th Cir. 2008) (noting that the more stringent standard of Rule 16 is required to amend pleadings after the deadline to amend pleadings has expired). Plaintiff CH2M Hill, Inc. notified the Court that although it could not agree to the motion, it was not going to oppose it.² Pursuant to Federal Rule of Civil Procedure 15, Defendant's motion is GRANTED.

IT IS THEREFORE ORDERED that Defendant Comal County shall file its amended pleading no later than June 7, 2010.

It is so ORDERED.

SIGNED this 25th day of May, 2010.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

²Letter from Pl.'s counsel to the Court, May 24, 2010 (Docket Entry No. 22).